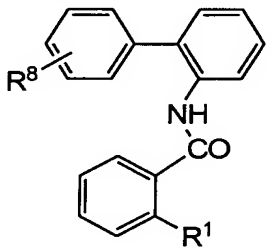
REMARKS

Applicants have amended Claim 22 (and thus all of the claims) to specify some but not all of the group of species set forth in Claim 26 (now canceled), none of which is within Deuteromycetes, the taxonomic group in which Botrytis is classified. The organisms now specified in Claim 22 are identified in the specification within the description at page 4, line 27, through page 5, line 21. Applicants have also narrowed the scope of Claim 27.

Rejection under 35 U.S.C. 102

Claims 22-28, 35-39, 42, 43, 47, 48, 52, and 53 stand rejected under 35 U.S.C 102(b) as being anticipated by U.S. Patent 5,589,493 ("Eicken et al"). Applicants respectfully traverse.

Eicken et al discloses, inter alia, 2-aminobiphenyl derivatives of formula III in which group A is formula (A1), represented as follows:



in which R^1 can be methyl, trifluoromethyl, chlorine, bromine, or iodine, and R^8 can be C_1-C_4-alkyl, C_1-C_4-alkoxy, C_1-C_4-alkylthio, or halogen. See column 30, line 54, through column 31, line 47. Eicken et al specifically teaches that the disclosed compounds are used for combating Botrytis. See column 1, lines 49 and 54-55; column 4, lines 8-24 (especially line 8); column 8, lines 23-53 (especially line 53); column 12, line 20, through column 13, line 52 (especially line 52); column 14, line 48, through column 15, line 40 (especially column 15, line 40); and column 17, line 1, through column 18, line 1 (especially column 18, line 1); as well as the title and the Abstract, not to mention Claims 14-16. The clear emphasis of Eicken et al is on treatment of Botrytis-infected plants.

Applicants are aware that Eicken et al refers to other phytopathenogenic fungi at column 34, line 42, through column 35, line 6. However, no other reference to pathogens other than Botrytis is found. The clear intent to exclude pathogens other than Botrytis is evident from the prosecution of the corresponding European patent application EP 545,099. The published application EP 0 545 099 A2 (copy enclosed)

similarly mentions other pathogens beginning at page 49, line 49 (i.e., beginning with the paragraph "Die neuen Verbindungen zeichnen sich durch eine hervvorragene Wirksamkeit gegen ein breites Spektrum von pflantenpathogenen Pilzen, insbesondere gegen Botrytis aus. Sie sind zum Teil systemisch wirksam und können als Blatt- und Bodenfungizide eingesetzt warden." (emphasis added)). However, the subsequently published examined application EP 0 545 099 B1 (copy also enclosed) omits any reference to other pathogens, as seen by replacement of the long discussion of other pathogens by a modified version of the short paragraph at page 24, lines 56-57, which refers only to Botrytis (i.e., "Die neuen Verbindungen zeichnen sich durch eine hervvorragene Wirksamkeit gegen Botrytis aus. Sie sind zum Teil systemisch wirksam und können als Blatt- und Bodenfungizide eingesetzt warden." (emphasis added)). Discussion of this change can be found by examining the EPO prosecution history.

In the second EPO Office Action (copy in German attached), the European Patent Office stated at page 5, paragraph 10, first sentence, that "[t]he problem to be solved with the instant invention might be to provide anilide derivatives for combating Botrytis." In the Response to the second EPO Office Action (copy in German attached), the applicant stated (in paragraph linking pages 6 and 7, starting with "Diese Betrachtungsweise...") the following (English translation; emphasis added):

> This view can be easily applied to the present question: The use of the compounds according to the use claims is directed to the combating of Botrytis. This functional feature is present in the claims. Some of the claimed compounds have already been known to be fungicidally active, but it has not been made public, that they are useful for combating Botrytis.

In a later response the applicant deleted reference to all other organisms from the description (as discussed above).

Applicants therefore respectfully submit that Eicken et al, when taken in proper context, does not teach the use of the disclosed compounds against pathogens other than Botrytis.

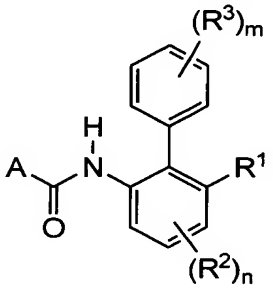
Rejection under 35 U.S.C. 103

Claims 22-30, 33-39, 41-44, 46-49, and 51-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Eicken et al and JP 2001-302605. [The Final Office Action refers to Claims 36-49 instead of the

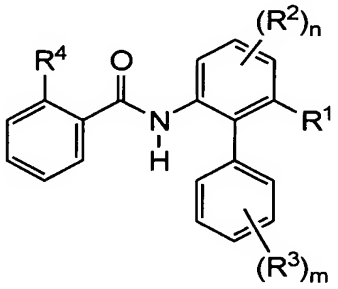
obviously intended 46-49. Applicants have responded accordingly but request clarification and new time period for response if this assumption is in error.] Applicants respectfully traverse.

As discussed above, Eicken et al discloses the 2-aminobiphenyl derivatives shown at column 30, line 54, through column 31, line 47, but would not teach or suggest the use of the disclosed compounds against pathogens other than Botrytis.

As discussed in Applicants' previous Amendment filed November 8, 2005, the JP '605 patent discloses compounds having the formula

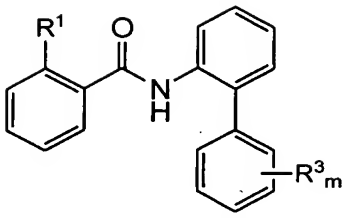


in which the terms are generally defined in Japanese. The Office Action, however, refers to compound 40 (described at pages 23-24), one of a host of such compounds disclosed in the reference. Compound 40 can be represented by the formula (drawn in the same general orientation as shown in Applicants' claims)



in which the substituents are variously defined in Japanese (some of which are shown in standard chemical notation in the table at page 24). Although the reference is in Japanese, it appears clear that group R^1 must be a substituent <u>other than hydrogen</u> (e.g., column 1, lines 13-50, as well as the specific methyl, methoxy, and chlorine groups shown in the table at page 24).

Applicants' claimed compounds are limited to embodiments in which R^2 <u>must be hydrogen</u>, meaning that in the biphenyl moiety the benzene ring proximate to the bridging amide nitrogen atom bears no substituent (other than, of course, the benzamide group and a second benzene ring), as shown in the formula



The compounds disclosed in the JP '605 patent are thus structurally distinguishable from the compounds of Applicants' claimed invention. Nothing in the reference would lead those skilled in the art to compounds in which the biphenyl moiety is unsubstituted in the benzene ring proximate to the bridging amide nitrogen atom. Applicants submit that the JP '605 patent, whether taken alone or with Eicken et al would not led those skilled in the art to their claimed invention.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By _____
Richard E. L. Henderson
Attorney for Applicant(s)
Reg. No. 31,619

Bayer CropScience LP
100 Bayer Road
Pittsburgh, Pennsylvania 15205-9741
PHONE: (412) 777-3809
FACSIMILE PHONE NUMBER:
412-777-3902
s/rmc/relh/0608